

SENATE BILL No. 383

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-8; IC 28-1-12-8; IC 28-6.1-6-28; IC 30-4-3-7.

Synopsis: Motor vehicle title loans. Provides that certain lenders may make loans for which the collateral is title to a motor vehicle. Provides that the interest rate for a motor vehicle title loan may not exceed 22%. Requires a motor vehicle title lender to provide certain warnings to borrowers. Sets forth procedures for: (1) repossessing a motor vehicle if a borrower defaults on a motor vehicle title loan; and (2) redeeming the title to a repossessed motor vehicle. Prohibits certain actions by motor vehicle title lenders and imposes penalties for violations. Permits certain banks, trust companies, and savings banks to make certain purchases and sales.

Effective: July 1, 2006.

Nugent

January 11, 2006, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 383

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]:

4 **Chapter 8. Motor Vehicle Title Loans**

5 **Sec. 1. This chapter shall be known and may be cited as the**
6 **Uniform Consumer Credit Code - Motor Vehicle Title Loans.**

7 **Sec. 2. (a) Except as otherwise provided, the provisions of this**
8 **article that apply to consumer loans apply to motor vehicle title**
9 **loans.**

10 **(b) This chapter applies to the following:**

11 **(1) A person who:**

12 **(A) is licensed to make a loan under this article; or**

13 **(B) facilitates, enables, or acts as a conduit for a lender**
14 **who is or may be exempt from licensing under**
15 **IC 24-4.5-3-502.**

16 **(2) A bank, savings association, credit union, or other**
17 **regulated financial institution, other than a financial**

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institution that is specifically exempt regarding limitations on interest rates and fees.

(3) Any person, if the department determines that a transaction to which the person is a party:

(A) is in substance a disguised motor vehicle title loan; or

(B) constitutes an act of subterfuge to avoid the requirements of this chapter.

Sec. 3. As used in this chapter, "department" refers to the department of financial institutions.

Sec. 4. As used in this chapter, "month" means a period extending from a given date in one (1) calendar month to the same date in the succeeding calendar month or, if there is no same date in the succeeding calendar month, to the last day of the succeeding calendar month. Unless otherwise indicated, a month is considered to have thirty (30) days.

Sec. 5. As used in this chapter, "motor vehicle title lender" means a person that lends money on a pledge.

Sec. 6. As used in this chapter, "motor vehicle title loan" means a loan that is secured by a motor vehicle whose unencumbered certificate of title is deposited with a motor vehicle title lender.

Sec. 7. As used in this chapter, "person" means an individual, a firm, an association, a limited liability company, a partnership, a joint stock association, a trust, a corporation, or any other business entity.

Sec. 8. As used in this chapter, "pledge" means an unencumbered certificate of title to a motor vehicle that secures a motor vehicle title loan.

Sec. 9. As used in this chapter, "principal" means the total of:

(1) the net amount paid to or receivable by a borrower; and

(2) to the extent that payment of a motor vehicle title loan is deferred, any charges that are:

(A) permitted under this chapter; and

(B) not included in subdivision (1);

for the motor vehicle title loan.

Sec. 10. A motor vehicle title lender may contract for and impose an interest rate on a motor vehicle title loan. The interest rate may not exceed twenty-two percent (22%) per month. An interest rate imposed under this section is not a fee for purposes of section 11 of this chapter.

Sec. 11. Notwithstanding any other law, the only fee that a motor vehicle title lender may contract for and receive on a motor vehicle title loan is a charge that may not exceed the lien fee

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1 charged by the bureau of motor vehicles.

2 Sec. 12. (a) A motor vehicle title lender shall disclose to a
3 borrower any information required under the Federal Truth in
4 Lending Act.

5 (b) A motor vehicle title lender shall conspicuously display in
6 the lending area of each of the motor vehicle title lender's business
7 locations and in all loan documents a notice that contains the
8 following statements:

9 "THIS LOAN IS NOT INTENDED TO MEET LONG TERM
10 FINANCIAL NEEDS.

11 YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT
12 TERM CASH NEEDS.

13 YOU WILL BE REQUIRED TO PAY ADDITIONAL
14 INTEREST IF YOU RENEW THIS LOAN RATHER THAN
15 PAY THE DEBT IN FULL WHEN DUE.

16 THIS LOAN IS A HIGHER INTEREST LOAN. YOU
17 SHOULD CONSIDER WHAT OTHER LOWER COST
18 LOANS MAY BE AVAILABLE TO YOU.

19 YOU ARE PLACING AT RISK YOUR CONTINUED
20 OWNERSHIP OF THE PERSONAL PROPERTY WHOSE
21 TITLE YOU ARE PLEDGING FOR THIS LOAN.

22 IF YOU FAIL TO REPAY THE FULL AMOUNT OF THIS
23 LOAN ON OR BEFORE THE END OF THE MATURITY
24 DATE OR RENEWAL OF THE LOAN, THE LENDER MAY
25 TAKE POSSESSION OF THE PROPERTY WHOSE TITLE
26 IS PLEDGED AND SELL THE PROPERTY IN THE
27 MANNER PROVIDED BY LAW.

28 YOU HAVE A LEGAL RIGHT OF RESCISSION. THIS
29 MEANS YOU MAY CANCEL YOUR CONTRACT AT NO
30 COST TO YOU BY RETURNING THE ORIGINAL LOAN
31 CHECK OR CASH YOU BORROWED BY THE LENDER'S
32 NEXT BUSINESS DAY AFTER THE DATE OF YOUR
33 LOAN.

34 IF THE TITLE PLEDGE AGREEMENT IS LOST,
35 DESTROYED, OR STOLEN, YOU SHOULD
36 IMMEDIATELY ADVISE THE LENDER IN WRITING."

37 (c) The statement described in subsection (b) must be in:

38 (1) 14 point bold type in a loan agreement; or

39 (2) at least one (1) inch bold print in the lending area of a
40 business location.

41 (d) A motor vehicle title lender shall provide a borrower with a
42 pamphlet that:

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(1) is approved by the department; and

(2) describes:

(A) the availability of debt management and credit counseling services; and

(B) the borrower's rights and responsibilities in a motor vehicle title loan transaction.

Sec. 13. (a) The term of a motor vehicle title loan must be at least thirty (30) days.

(b) A borrower that renews a motor vehicle title loan shall make a payment of at least ten percent (10%) of the original principal of the motor vehicle title loan plus any interest authorized under this chapter. This subsection applies to the first and each subsequent renewal of a motor vehicle title loan by a borrower. The motor vehicle title lender may defer payment of some or all of a payment required under this subsection but may not charge interest on the deferred amount.

Sec. 14. (a) A borrower shall provide a motor vehicle title lender with a signed statement that:

(1) the information provided by the borrower concerning the borrower's employment, income, and expenses is true and correct; and

(2) the borrower believes the borrower has the ability to repay the motor vehicle title loan.

The receipt of information provided under this subsection constitutes a motor vehicle title lender's good faith belief that a borrower has the ability to repay a motor vehicle title loan.

(b) A motor vehicle title lender may not make a motor vehicle title loan to a borrower unless the borrower presents a pledge.

(c) A borrower may prepay any amount on a motor vehicle title loan without charge at any time before the due date of the motor vehicle title loan.

(d) A motor vehicle title lender shall give a borrower that makes a partial or full payment on a motor vehicle title loan a signed and dated receipt showing the amount paid and the balance due on the motor vehicle title loan.

(e) A motor vehicle title lender shall provide to a borrower a copy of the required loan documents before disbursing loan proceeds.

(f) A borrower may rescind a motor vehicle title loan without cost to the borrower not later than the end of the motor vehicle title lender's business day immediately following the day on which the motor vehicle title loan was made. To rescind a motor vehicle

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1 title loan, a borrower must:

- 2 (1) inform the motor vehicle title lender that the borrower
3 wants to rescind the motor vehicle title loan; and
4 (2) return the cash amount of the principal of the motor
5 vehicle title loan to the motor vehicle title lender.

6 (g) A motor vehicle title lender may not sue a borrower for a
7 deficiency balance unless the borrower commits fraud or
8 wrongfully transfers interest in, damages, or hides the vehicle
9 whose title secures the motor vehicle title loan.

10 Sec. 15. A motor vehicle title loan may not be secured by
11 personal property other than a motor vehicle with an
12 unencumbered title.

13 Sec. 16. (a) This section does not apply to a person that is
14 licensed by the department for a purpose other than making
15 consumer loans.

16 (b) A motor vehicle title lender may not make a motor vehicle
17 title loan in:

- 18 (1) an office;
19 (2) a suite;
20 (3) a room; or
21 (4) another place of business;

22 where a business other than making motor vehicle title loans is
23 solicited or conducted unless the motor vehicle title lender obtains
24 a written opinion from the director of the department that the
25 other business is not contrary to the best interests of consumers,
26 including borrowers.

27 Sec. 17. (a) An agreement with respect to a motor vehicle title
28 loan may not provide for charges as a result of a default by the
29 borrower other than charges authorized by this chapter. A
30 provision in violation of this section is unenforceable.

31 (b) If a borrower defaults on a motor vehicle title loan, the
32 motor vehicle title lender shall mail a notice to cure default to the
33 borrower at the borrower's last known address before repossessing
34 the borrower's motor vehicle. A notice under this subsection must
35 state that the borrower has ten (10) days after the date of the notice
36 to cure the default.

37 (c) If a borrower does not cure a default within ten (10) days
38 after the date of the notice under this section, the motor vehicle
39 title lender may repossess, in accordance with the applicable
40 procedures set forth in IC 26-1-9.1, the borrower's motor vehicle
41 that is pledged for the motor vehicle title loan.

42 (d) A motor vehicle title lender may not charge a borrower any

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1 interest or fees after the motor vehicle title lender repossesses the
2 borrower's motor vehicle.

3 (e) After repossessing a borrower's motor vehicle, a motor
4 vehicle title lender shall mail a notice of right to redeem to the
5 borrower. A notice under this subsection must state that the
6 borrower may redeem the title to the motor vehicle by paying all
7 outstanding principal and interest authorized under this chapter,
8 plus all repossession charges owed or paid by the motor vehicle
9 title lender to third parties, within ten (10) days after the date of
10 the notice.

11 (f) A borrower that fails to redeem a motor vehicle's title under
12 subsection (e) forfeits all rights, title, and interest in the motor
13 vehicle. Upon forfeiture under this subsection, a motor vehicle title
14 lender may dispose of the motor vehicle in a commercially
15 reasonable manner. If the motor vehicle title lender sells the motor
16 vehicle, the motor vehicle title lender shall apply the proceeds of
17 the sale to any principal, interest, and charges, including
18 repossession and sale costs, authorized under this chapter and
19 owed by the borrower to the motor vehicle title lender. The motor
20 vehicle title lender shall remit any surplus from the sale of the
21 motor vehicle to the borrower in the manner determined by the
22 department.

23 Sec. 18. (a) This section applies to licensed and unlicensed
24 persons.

25 (b) A motor vehicle title lender who willfully violates this
26 chapter:

- 27 (1) may be subject to a civil penalty not to exceed two
- 28 thousand dollars (\$2,000);
- 29 (2) may be subject to the remedies provided in
- 30 IC 24-4.5-5-202;
- 31 (3) may be subject to the penalties under IC 24-5-0.5;
- 32 (4) may not collect, receive, or retain any principal, interest,
- 33 or other charges from a motor vehicle title loan; and
- 34 (5) may be liable to a borrower for actual damages, statutory
- 35 damages of two thousand dollars (\$2,000) for each violation
- 36 of this chapter, costs, and attorney's fees.

37 However, subdivisions (4) and (5) do not apply if the motor vehicle
38 title lender violates this chapter due to an accident or a bona fide
39 computation error.

40 (c) The department may sue a motor vehicle title lender:

- 41 (1) to enjoin any conduct that violates this chapter; or
- 42 (2) for equitable relief.

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(d) A borrower may pursue remedies in addition to the remedies described in this section. A borrower is not required to exhaust administrative remedies before pursuing a remedy under this section.

Sec. 19. A motor vehicle title lender may not do the following:

(1) Use or threaten to use criminal process to collect a motor vehicle title loan.

(2) Threaten to take an action prohibited by this chapter against a borrower.

(3) Make a misleading or deceptive statement regarding a motor vehicle title loan or a consequence of taking a motor vehicle title loan.

(4) Contract for or collect attorney's fees on motor vehicle title loans made under this chapter.

(5) Use a method or an agreement that the department determines would have the effect of charging or collecting fees, charges, or interest in excess of the amount allowed by this chapter. A method or an agreement under this subdivision includes the following:

(A) Entering into a transaction, other than a transaction authorized under this chapter, with a borrower, including the following:

(i) A transaction in which a borrower receives a purported cash rebate advanced by a person offering a product or service, including Internet content services, but the purported cash rebate does not represent a discount or an adjustment of the purchase price for the product or service.

(ii) A transaction designed to evade the applicability of this chapter.

(B) Entering into a sales-leaseback arrangement.

(C) Catalog sales.

(6) Engage in unfair, deceptive, or fraudulent practices in making or collecting a motor vehicle title loan.

(7) Charge to cash a check representing the proceeds of a motor vehicle title loan.

(8) Include any of the following provisions in a motor vehicle title loan document:

(A) A hold harmless clause.

(B) A confession of judgment clause.

(C) An enforceable mandatory arbitration clause.

(D) An assignment or an order for payment of wages or

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1 other compensation for services.

2 (E) A provision in which the borrower agrees not to assert
3 a claim or defense arising from a contract.

4 (F) A waiver of any provision of this chapter.

5 (9) Sell insurance of any kind in connection with the making
6 or collecting of a motor vehicle title loan.

7 Sec. 20. A finance charge made under this chapter is exempt
8 from IC 24-4.5-3-508 and IC 35-45-7.

9 Sec. 21. The following statement must appear on each motor
10 vehicle title loan agreement:

11 "The borrower represents and warrants, to the best of the
12 borrower's knowledge, that the pledged motor vehicle is not
13 stolen and has no liens or encumbrances against it. The
14 borrower has the right to enter into this transaction. The
15 borrower will not apply for a duplicate certificate of title for
16 the pledged motor vehicle while this motor vehicle title loan
17 agreement is in effect."

18 Sec. 22. (a) A motor vehicle title lender shall post a bond to the
19 department in the amount of fifty thousand dollars (\$50,000) for
20 each location at which the motor vehicle title lender makes motor
21 vehicle title loans. However, the maximum bond posted by a motor
22 vehicle title lender under this subsection is five hundred thousand
23 dollars (\$500,000).

24 (b) A bond posted under subsection (a) continues in effect for
25 two (2) years after the motor vehicle title lender ceases operating
26 in Indiana. The bond must be available during the period to pay
27 damages and penalties to a consumer harmed by a violation of this
28 chapter by the motor vehicle title lender that posted the bond.

29 Sec. 23. The department may adopt rules under IC 4-22-2 to
30 carry out the purposes of this chapter.

31 SECTION 2. IC 28-1-12-8 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2006]: Sec. 8. (a) Unless otherwise provided in an agreement or
34 trust, a bank or trust company that holds funds or property as a
35 fiduciary may use the funds or property to purchase from the
36 bank, the trust company, or an affiliate of the bank or trust
37 company a product, service, or security, including an insurance
38 product or security that is underwritten by the bank, the trust
39 company, an affiliate of the bank or trust company, or a syndicate
40 or selling group that includes the bank, the trust company, or an
41 affiliate of the bank or trust company, if the:

42 (1) purchase price is reasonable; and

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(2) purchase complies with IC 30-4-3.5.

The purchase price may be in addition to compensation received by the bank or trust company in its fiduciary capacity.

(b) A bank or trust company that makes a purchase or sale described in subsection (a) shall disclose not later than December 31 of each year to each person entitled to receive statements of account activity from the bank or trust company any purchase or sale made by the bank or trust company during the year. The disclosure must be in writing or an electronic format and include the following:

(1) Any capacity in which the bank, the trust company, or an affiliate of the bank or trust company acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services; that is the subject of the purchase or sale.

(2) A statement that the bank, the trust company, or an affiliate of the bank or trust company has an interest in the subject of the purchase or sale, if applicable.

SECTION 3. IC 28-6.1-6-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 28. (a) Unless otherwise provided in an agreement or trust, a savings bank that holds funds or property as a fiduciary may use the funds or property to purchase from the savings bank or an affiliate of the savings bank a product, service, or security, including an insurance product or security that is underwritten by the savings bank, an affiliate of the savings bank, or a syndicate or selling group that includes the savings bank or an affiliate of the savings bank, if:

(1) the purchase price is reasonable; and

(2) the purchase complies with IC 30-4-3.5.

The purchase price may be in addition to compensation received by the savings bank in its fiduciary capacity.

(b) A savings bank that makes a purchase or sale described in subsection (a) shall disclose not later than December 31 of each year to each person entitled to receive statements of account activity from the savings bank any purchase or sale made by the savings bank during the year. The disclosure must be in writing or an electronic format and include the following:

(1) Any capacity in which the savings bank or an affiliate of the savings bank acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services;

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1 **that is the subject of the purchase or sale.**

2 **(2) A statement that the savings bank or an affiliate of the**
 3 **savings bank has an interest in the subject of the purchase or**
 4 **sale, if applicable.**

5 SECTION 4. IC 30-4-3-7, AS AMENDED BY P.L.238-2005,
 6 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2006]: Sec. 7. (a) Unless the terms of the trust provide
 8 otherwise **or the transaction is authorized under IC 28-1-12-8 or**
 9 **IC 28-6.1-6-28**, the trustee has a duty:

10 (1) not to loan funds to ~~himself~~ **the trustee** or an affiliate;

11 (2) not to purchase or participate in the purchase of trust property
 12 from the trust for the trustee's own or an affiliate's account;

13 (3) not to sell or participate in the sale of the trustee's own or an
 14 affiliate's property to the trust; or

15 (4) if a corporate trustee, not to purchase for or retain in the trust
 16 its own or a parent or subsidiary corporation's stock, bonds, or
 17 other capital securities. However, the trustee may retain such
 18 securities already held in trusts created prior to September 2,
 19 1971.

20 (b) Unless the terms of the trust provide otherwise, a corporate
 21 trustee may invest in, purchase for, or retain in the trust its own or an
 22 affiliate's obligations, including savings accounts and certificates of
 23 deposit, without the investment, purchase, or retention constituting a
 24 conflict of interest under section 5 of this chapter.

25 (c) Unless the terms of the trust provide otherwise, a corporate
 26 trustee does not violate subsection (a) by investing in, purchasing for,
 27 or retaining in the trust its own or an affiliate's obligations, including
 28 savings accounts and certificates of deposit, if the payment of each
 29 obligation is fully insured by the Bank Insurance Fund or the Savings
 30 Association Insurance Fund of the Federal Deposit Insurance
 31 Corporation, the National Credit Union Share Insurance Fund, or any
 32 insurer approved by the department of financial institutions under
 33 IC 28-7-1-31.5.

34 (d) If the terms of the trust permit the trustee to deal with a
 35 beneficiary for the trustee's own account, the trustee has a duty to deal
 36 fairly with and to disclose to the beneficiary all material facts related
 37 to the transaction which the trustee knows or should know.

38 (e) Unless the terms of the trust provide otherwise, the trustee may
 39 sell, exchange, or participate in the sale or exchange of trust property
 40 from one (1) trust to ~~himself~~ **the trustee** as trustee of another trust,
 41 provided the sale or exchange is fair and reasonable with respect to the
 42 beneficiaries of both trusts and the trustee discloses to the beneficiaries

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1 of both trusts all material facts related to the sale or exchange which
2 the trustee knows or should know.

3 (f) This section does not prohibit a trustee from enforcing or
4 fulfilling any enforceable contract or agreement:

5 (1) executed during the settlor's lifetime; and

6 (2) between the settlor and the trustee in the trustee's individual
7 capacity.

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